

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JERRY LEE ADKINS,

Movant,

v.

Civil Action No. 2:16-cv-05725
(Criminal No. 2:03-cr-00279-01)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the court is movant's Emergency Motion to Correct Sentence pursuant to 28 U.S.C. § 2255 (ECF No. 77), filed on June 24, 2016.

This action was previously referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to the court of his Proposed Findings and Recommendation ("PF&R") for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B).

On June 21, 2018, Magistrate Judge Tinsley entered his PF&R recommending that the Section 2255 motion be denied, inasmuch as the relief requested from movant's sentence under

the career offender guidelines at issue in this case is foreclosed by the Fourth Circuit's decision in United States v. Brown, 868 F.3d 297 (4th Cir. 2017), petition for cert. filed (NO. 17-9276), May 29, 2018, and that this action be dismissed from the docket of the court.

On July 5, 2018, movant filed objections to the PF&R, through his counsel, Federal Public Defender Christian M. Capece and Research and Writing Specialist Jonathan D. Byrne. Therein, movant makes two points which he wishes to preserve for appellate review, while conceding that this court is bound by Fourth Circuit precedent. The first is an objection to the holding in Brown, noting that Brown is at odds with the decisions of certain other courts of appeals that have recognized a right to retroactive collateral review of a career offender guideline sentence that is challenged on vagueness grounds with respect to a predicate crime of violence, where the sentence was rendered at a time when the guidelines were understood to be mandatory; that is, before United States v. Booker, 543 U.S. 220 (2005), or even before Kimbrough v. United States, 552 U.S. 85 (2007). The second, which only becomes material if movant were to prevail on the first objection, that is, if Brown is at some point found to be wrongly decided, objects to the characterization of unlawful wounding in West

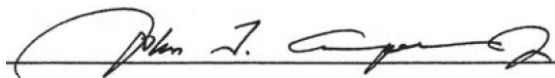
Virginia as a crime of violence for career offender sentence enhancement purposes, and thus seeks to overturn United States v. Covington, 880 F.3d 129 (4th Cir. 2018), cert. denied, 138 S. Ct. 2588, which so held.

While the court recognizes the thoughtful analysis in movant's objections, the conclusion reached by the magistrate judge is in keeping with Fourth Circuit precedent. Accordingly, it is ORDERED as follows:

1. That the findings in Magistrate Judge Tinsley's Proposed Findings and Recommendation be, and they hereby are, adopted and incorporated in full.
2. That movant's motion under 28 U.S.C. § 2255 be denied.
3. That this action be dismissed and removed from the docket of the court.

The Clerk is directed to forward copies of this memorandum opinion and order to the movant, all counsel of record, and United States Magistrate Judge Dwane L. Tinsley.

DATED: August 3, 2018


John T. Copenhaver, Jr.
United States District Judge